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No. .....

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1988

RONNIE O. KITCHENS, et al.,
Petitioners,

v.

STATE OF OREGON, EX REL ADULT AND FAMILY SERVICES DIVISION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF OREGON

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April 7, 1989.

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QUESTIONS PRESENTED

1. Does the State of Oregon violate the Fourteenth Amendment Due Process and Equal Protection clauses by withholding notice of Title IV-A AFDC assistance proceedings from putative fathers, consequently both keeping secret from putative fathers the state's intention to establish their paternity and support obligations and discouraging putative fathers from timely exercising their rights?

2. Does the State of Oregon violate the Fourteenth Amendment Due Process rights of putative fathers by requiring paternity to be established in every Title IV-D AFDC filiation proceeding without giving putative fathers the opportunity to invoke the trial court's consideration of evidence as to whether or not the establishment of paternity is consistent with the welfare child's best interests?

PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

The petitioner in the circuit court cases was the appellant in the Court of Appeals of the State of Oregon. The named petitioner in all three consolidated cases was:

State of Oregon, ex rel Adult and Family Services Division.

The respondents in the circuit court cases were the respondents in the Court of Appeals of the State of Oregon. The named respondents in the consolidated cases, entitled State ex rel AFSD v. Kitchens, were:

Ronnie Oscar Kitchens
John Frank Moore
Robert W. Dickinson

American Civil Liberties Union Foundation of Oregon, Inc. appeared amicus curiae before the Supreme Court of the State of Oregon on respondents' petition for review.

TABLE OF CONTENTS

	page
QUESTIONS PRESENTED.....	i
PARTIES TO THE PROCEEDINGS IN THE COURT BELOW.....	ii
TABLE OF AUTHORITIES.....	
OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED.....	4
STATEMENT OF THE CASE.....	5
REASONS FOR GRANTING THE WRIT.....	14
I. INTRODUCTION.....	14
II. THE CONFLICTS ARE SUBSTANTIAL..	18
III. THE ISSUES HAVE NATIONAL IMPORTANCE.....	30
A. PUTATIVE FATHERS POSSESS A LEGALLY PROTECTED FOURTEENTH AMENDMENT DUE PROCESS LIBERTY INTEREST AT THE TITLE IV-A AFDC APPLICATION FOR ASSISTANCE STAGE, WHICH PROVIDES THE BASIS FOR MAKING THE FEDERAL CLAIMS IN THE TITLE IV-D PROCEEDINGS.....	33

B. PUTATIVE FATHERS POSSESS A LEGALLY PROTECTED FOURTEENTH AMENDMENT DUE PROCESS PROPERTY INTEREST AT THE TITLE IV-A STAGE, WHICH INTERRELATES WITH THE "OPPORTUNITY INTEREST"..... 39

C. THE STATE OF OREGON POLICY OF NOTIFYING MARRIED FATHERS OF TITLE IV-A AFDC APPLICATION FOR ASSISTANCE PROCEEDINGS, WHILE NOT SO NOTIFYING PUTATIVE FATHERS, VIOLATES THE RIGHTS OF PUTATIVE FATHERS TO EQUAL PROTECTION UNDER THE FOURTEENTH AMENDMENT, AND PROVIDES BASIS FOR THEIR TITLE IV-D CLAIMS..... 42

D. FAILURE OF THE STATE TO PROVIDE TITLE IV-A NOTICE TO PUTATIVE FATHERS DEPRIVES THEM OF THEIR FOURTEENTH AMENDMENT PROCEDURAL DUE PROCESS RIGHTS AND PROVIDES BASIS FOR THEIR TITLE IV-D CLAIMS..... 45

E. THE OREGON COURT OF APPEALS DECISION, AS APPLIED TO FORECLOSE PUTATIVE FATHERS FROM RAISING CONSTITUTIONAL AND FACTUAL DEFENSES TO TITLE IV-D PATERNITY ACTIONS, DENIES THEM DUE PROCESS OF LAW..... 54

CONCLUSION..... 65

APPENDICES

Appendix A:	Order Denying Review.....	A-1
	Order Denying Reconsideration.....	A-2
	Opinion of the Oregon Court of Appeals.....	A-3
Appendix B:	Multnomah County Circuit Court Judgment.....	B-1
	Order Granting Summary Judgment and of Dismissal	B-2
	Consolidated Judgment....	B-6
	Consolidated Order Granting Summary Judgment and of Dismissal.....	B-8
Appendix C:	Affidavit of Arthur C. Emlen.....	C-1
Appendix D:	Constitutional Provisions	D-1
	Regulatory Provisions	D-5
	Statutory Provisions	D-11

TABLE OF AUTHORITIES

CASES

PAGE

A v. X,Y,&Z, ___ Wyo ___, 641 P.2d 1222, 1225, 1227 (1982)..... 28

Armstrong v. Manzo, 380 U.S. 545, 552 (1965)..... 45

Bowen v. Gilliard, 107 S.Ct. 3008, 3026 (1987)..... 42

Caban v. Mohammed, 441 U.S. 380 (1979)..... 33

Califano v. Aznavorian, 439 U.S. 170 (1978)..... 44

City of Clairmont v. Truell, 126 N.H. 300, 489 A.2d 581 (1985)..... 41

Clark v. Jeter, 108 S.Ct. 1910 (1988)..... 16,44

Craig v. Boren, 429 U.S. 190, 193-194 (1976) rehearing denied 429 U.S. 1124 (1976)..... 22

Ettore I. v. Angela D., 127 A.D.2d, 6, 513 N.Y.S.2d 733, 739 (1987).... 27

Finnerty v. Boyett, 469 S.2d 287, 292 (La App 2d Cir 1985)..... 34

Fuentes v. Shevin, 407 U.S. 67, 80-81 (1972)..... 45,47

Goldberg v. Kelly, 397 U.S. 254, 267 (1970)..... 45

Gresham v. Georgia Dept. of Human Resources, 257 Ga. 747, 363 S.E.2d 544 (1988)..... 41,53

Happel v. Mecklenburger, 101 Ill. App.3d 107, 56 Ill. Dec. 569, 427 N.E.2d 974, 983 (1981)..... 28

Harper v. Virginia Board of Elections, 383 U.S. 663, 670 (1966).... 44

Haxton and Haxton, 399 Or. 616, 705 P.2d 721 (1985)..... 41

In Re Baby Girl Eason, 257 Ga. 292, 358 S.E.2d 459, 462 (1987)..... 34

In re Paternity of D.L.H., 142 Wis.2d 606, 419 N.W.2d 283, 286 (1987)..... 26,28

Kitchens v. Bowen, 825 F.2d 1337, 1341-42 (9th Cir. 1987) cert denied, 108 S.Ct. 1109 (1988).... 10,18

Lehr v. Robertson, 463 U.S. 248 (1983)..... 21,31,33,34,35,37,40,47,55

Lindsey v. Normet, 405 U.S. 56, 66 (1972)..... 54

Little v. Streater, 452 U.S. 1, 13 (1981)..... 45,50,57,61,63,64

McDaniels v. Carlson, 108 Wash.2d 299, 738 P.2d 254 (1987)..... 26,28

Markert v. Behm, __ Minn App ___, 394 N.W.2d 239, 244 (1986)..... 28

Mathews v. Eldridge, 424 U.S. 319, 335 (1976)..... 47,56,63

Michael H. v. Gerald D., 191 Cal. App.3d 995, 236 Cal. Rptr. 810 (1987) cert granted (Docket No. 87-746, 1987 October Term)..... 28

Michelle W. v. Ronald W., 39 Cal.3d 354, 216 Cal. Rptr. 748, 703 P.2d 88, 93 (1985)..... 28

Moore v. City of East Cleveland, Ohio, 431 U.S. 494 (1977)..... 15

National Association for Advancement of Colored People v. State of Alabama, 357 U.S. 449, 459 (1958)..... 23

P.B.C. v. B.H., 396 Mass. 68, 483 N.E.2d 1094, 1097-98 (1985)..... 28

Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976)..... 15

Quilloin v. Walcott, 434 U.S. 246, 254-255 (1978)..... 27

Rivera v. Minnich, 107 S.Ct. 3001, 3005 (1987)..... 40,55,62,63

Roberts v. United States Jaycee's, 468 U.S. 609, 619-20 (1984)..... 38

Singleton v. Wulff, 428 U.S. 106, 114-116 (1976)..... 22

Smith v. Organization of Foster Families for Equality and Reform, 431 U.S. 816, 844 (1977)..... 38

Stanley v. Illinois, 405 U.S. 645 (1972)..... 20,21,31,33

State of Oregon ex rel AFSD v. McDonald, 402 Or. App. 793, 601 P.2d 875, 876 (1979)..... 41

State of Oregon ex rel AFSD v. Tuttle, 304 Or 270, 744 P.2d 990, 992 (1987)..... 29,59

Wisconsin v. Yoder, 406 U.S. 205, 231-233 (1972)..... 38

CONSTITUTION

United States Constitution

Fifth Amendment..... 9
Fourteenth Amendment..... 8,9,10,11,17, 33,39,42,45,53

Oregon Constitution

Article I, Section 20..... 12

STATUTES

28 U.S.C. § 1257(3)..... 4

42 U.S.C. §§ 601..... 4,30,33
602(a)(7)(A)..... 5,43,50
602(26)(B)..... 5,6,24,46
654(4)(A)..... 5,6,24,46
666(a)(5)..... 5,16

ORS 109.010..... 5,41
109.060..... 5,41
109.070(1)(3)(5)..... 5,36,52
109.092..... 5,36
109.125(1)(b)(e)..... 5,52,58
109.155(1)(4)..... 5,58,59
109.175..... 5,58
418.042..... 5,32,36,46,48
418.045(1)(a)..... 5,43,50
418.130..... 5,59

REGULATIONS

45 CFR § 232.11(a)(1)..... 5,32,46,48
232.12(a)(1)(2)... 5,32,36,46,48
232.42..... 5,24,25,46
232.45(c)..... 5,24,46
302.31(a)(1)(2)..... 5,24,46
303.5(a)(b)..... 5,25,46
303.5(a)(1)(2)(b)..... 24
305.24(b)..... 5 ,16

LEGISLATIVE HISTORY

S.Report 93-1356, 93rd Cong. 2d Sess. 8133, 8154-8155 (1974)..... 24

S.Report 98-387, 98th Cong., 2d Sess. 2397, 2425 (1984)..... 50

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

RONNIE OSCAR KITCHENS, et al., Petitioners,

v.

STATE OF OREGON, ex rel ADULT AND FAMILY SERVICES DIVISION, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF OREGON

The petitioners, Ronnie Oscar Kitchens, John Frank Moore and Robert W. Dickinson, respectfully request that a Writ of Certiorari issue to review the judgment and opinion of the Court of Appeals of the State of Oregon, entered in the above-entitled proceeding on November 2, 1988.

OPINIONS BELOW

The opinion of the Court of Appeals of the State of Oregon is reported at 93

Or. App. 685, 763 P.2d 1196 (1988), and is reprinted in Appendix A hereto.

The order denying reconsideration by the Court of Appeals is reported at 94 Or. App. ___, ___ P.2d ___ (1988), and is reprinted in Appendix A hereto.

The order of the Supreme Court of the State of Oregon denying review is recorded at 307 Or. 340, ___ P.2d ___ (1989) and is reprinted in Appendix A hereto.

The memorandum orders, granting summary judgment and dismissal, and the judgment orders in the circuit court of the State of Oregon for the county of Multnomah (Mercedes F. Deiz, Judge) have not been reported. They are reprinted in Exhibit B hereto.

JURISDICTION

The petitioners (hereinafter referred to as "putative fathers") interposed, at

the trial court, certain federal constitutional and factual claims and defenses to three Title IV-D State initiated filiation proceedings brought by the State of Oregon. On September 22, 1986, the Oregon trial court granted summary judgment for putative fathers in the consolidated cases of John Frank Moore and Robert W. Dickinson and entered judgment for putative fathers in those consolidated cases on October 27, 1986. On October 27, 1986 the trial judge granted summary judgment in favor of putative father Ronnie O. Kitchens and entered judgment in favor of Mr. Kitchens.

The State of Oregon, through Adult and Family Services Division (AFSD), filed timely appeals to the Court of Appeals in all three cases. On April 6, 1987, all three cases were consolidated for appeal.

On appeal, the Court of Appeals, on November 2, 1988, entered an opinion reversing and remanding the judgments and orders of the trial court in the three cases. These putative fathers then filed their timely petition for review. The Court of Appeals entered an order denying reconsideration on December 23, 1988. The Supreme Court of the State of Oregon, on January 31, 1989, entered an order denying review of all three cases.

The jurisdiction of this Court to review the judgment of the Court of Appeals of the State of Oregon is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

The pertinent provisions of the Fourteenth Amendment of the United States Constitution, the Aid to Families with Dependent Children (AFDC) Act, 42 U.S.C.

§§ 601 and 602(a)(7)(A), (26)(B), the Child Support Enforcement (CSE) Act, 42 U.S.C. §§ 654(4)(A), 666(a)(5) and the pertinent regulations implementing the AFDC and CSE Acts, 45 CFR §§ 232.11(a)(1), 232.12(a)(1)(2), 232.42, 232.45(c), 302.31(a)(1)(2), 303.5(a)(b), 305.24(b), as well as the applicable Oregon Revised Statutes, ORS 109.010, 109.060, 109.070(1)(3)(5), 109.092, 109.125(1)(b)(e), 109.155(1)(4), 109.175, 418.042, 418.045(1)(a), 418.130, are set forth in App. D, infra, App. D-1 to D-17.

STATEMENT OF THE CASE

The petitioners, putative fathers Ronnie Oscar Kitchens, John Frank Moore, and Robert W. Dickinson, were identified pursuant to ORS 418.042 as fathers of children born out-of-wedlock by the children's mothers in AFSD Title IV-A Aid

to Families with Dependent Children ("AFDC") proceedings. 42 U.S.C. §§ 602(a)(26)(B).

Years later, without having given notice to these putative fathers at the Title IV-A stage, AFSD filed filiation proceedings pursuant to ORS 109.125(1)(b) in the Oregon circuit courts in accordance with the Title IV-D Child Support Enforcement (CSE) program, 42 U.S.C. §§654(4)(A).

In the Ronnie Oscar Kitchens case, the child was born September 13, 1982. AFSD filed filiation proceedings in May, 1985 to establish paternity and collect support in the amount of $10,016.42 plus birth costs. There had been no associations between the child and Mr. Kitchens. The child's mother, in depositions, indicated that her present husband wished to

adopt the child born out-of-wedlock, and that she felt it was in the child's best interests to continue to have no association with Mr. Kitchens.

In the John Frank Moore case, the child was born on July 31, 1974. AFSD granted assistance for support of the child in 1974 but did not file Title IV-D filiation proceedings until January, 1985 to establish paternity and collect support in the amount of $10,856 plus birth costs. There had been no association between the child and Mr. Moore.

In the Robert W. Dickinson case, the child was born on October 13, 1981. AFSD filed filiation proceedings in March, 1985 to establish paternity and collect support in the amount of $7,176 plus birth costs. There had been no associations between the child and Mr. Dickinson.

These putative fathers raised constitutional and factual defenses in their responses to AFSD's filiation proceedings to establish paternity and collect support. The putative fathers filed motions for summary judgment in each case. The responses and motions for summary judgment alleged that the failure of the State to send them notice of the Title IV-A proceedings violated their rights to due process and equal protection under the Fourteenth Amendment of the United States Constitution, and resulted in a substantial passage of time without associations between the putative fathers and the out-of-wedlock children. The responses and motions for summary judgment alleged that establishment of paternity under these circumstances would jeopardize the stability of the out-of-wedlock

children and that establishment of paternity should, therefore, be barred. Putative fathers' motions for summary judgment incorporated the opinion of a leading child welfare expert, Dr. Arthur C. Emlen. The essence of Dr. Arthur Emlen's opinion was that:

> "...[f]or the state to fail to settle the issue of a parent-child relationship at the first instance, when assistance is provided, is detrimental to the child and promotes instability in family relationships." (App C-4/5)

In a concurrent federal court proceeding initiated by the putative fathers, the Ninth Circuit Court of Appeals held that the putative fathers had no Fifth Amendment claim to notice of Title IV-A proceedings. As to the putative fathers' Fourteenth Amendment claim to Title IV-A notice, the Ninth Circuit Court affirmed the District

Court's dismissal of the action under the Younger abstention doctrine. The Court held that the Fourteenth Amendment claims involved matters of state interest and that the putative fathers had an adequate opportunity to raise their federal constitutional claims in the state court proceedings. Kitchens v. Bowen, 825 F.2d 1337, 1341-42 (9th Cir. 1987) cert. denied, 108 S.Ct. 1109 (1988).

In the ongoing State of Oregon circuit court proceedings, the Dickinson and Moore cases were consolidated. The Kitchens case was prosecuted separately. Putative fathers' responses and motions for summary judgment filed in the state court proceedings incorporated all claims raised by them in the federal court proceedings.

In the trial court proceedings on putative fathers' motions for summary judgment, the trial court found no genuine issue as to any material fact relating to the status of these putative fathers. The trial court found that the applicant mothers had designated each of them "as the fathers when they applied for assistance or shortly thereafter." (App B-3, 9). The trial court found that the state did not, indeed, notify the putative fathers when the mothers applied for Title IV-A assistance and held that "the lack of notice has deprived [each putative father] of his guarantees to due process and equal protection under the Fourteenth Amendment of the United States Constitution...," and dismissed each action. (App B-4, 10). Underpinning the trial court's dismissal of each of these filiation proceedings was

the court's finding that "(a) substantial period of time elapsed with no association between the (putative father) and the child born out of wedlock." (App B-3, 9, 10).

The Oregon Court of Appeals held, however, that the issue of paternity is material in each case. This holding was based upon three assertions by the court. First, the court, using a standing analysis, held that "[putative fathers] may not invoke claims of other persons who might be fathers." (App A-13). Secondly, the court held that "if the [putative father] is not in fact a father, AFSD's failure to inform him to the contrary could not have deprived him of liberty or property under the Due Process Clause (sic) of equal protection or of any privilege or immunity under Article I,

Section 20, of the Oregon Constitution." (App A-11, 12). Third, the court held that "the [trial] court should not bar AFSD from seeking to determine at trial the factual question -- paternity -- which brings into play [putative fathers'] claims." (App A-13).

Review of the Oregon Court of Appeals' decision was denied on January 31, 1989 by the Oregon Supreme Court without comment. (App A-1). Putative fathers' petition for review before the Oregon Supreme Court reiterated the putative fathers' federal due process and equal protection claims. They also asserted that the Oregon Court of Appeals' holding was contrary to federal and state standards for establishment of paternity consistent with the child's best interests. Finally, they asserted that

the Oregon Court of Appeals' ruling, denying them the opportunity to assert constitutional claims as defenses to the AFSD's filiation proceedings, constituted a denial of procedural due process.

REASONS FOR GRANTING THE WRIT

I. INTRODUCTION

This is a case of first impression in the nation which deserves resolution by this Court because it deals with the discretion of a state to suspend, indefinitely, the constitutional rights of thousands of its citizens. In a radical departure from accepted legal norms, the Oregon Court of Appeals has ruled that putative fathers, as U.S. citizens, lack basic constitutional rights -- the right to be notified by the state when the state first links these putative fathers with the out-of-wedlock children. The court's

rationale is that putative fathers, as such, have no constitutional rights until their biological paternity is established at the Title IV-D stage. The decision also prevents putative fathers from raising circumstances at the Title IV-D stage which evidence that establishment of paternity may not be consistent with the child's best interests.

Because pregnant mothers may opt to either rear their out-of-wedlock children separate and apart from putative fathers, Moore v. City of East Cleveland, Ohio, 431 U.S. 494 (1977), or obtain an abortion, Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976), putative fathers' rights to make decisions concerning these children are suspended until their birth. Then, at the Title IV-A stage, states such as Oregon may now hold

their rights in limbo indefinitely by withholding Title IV-A notice, keeping the Title IV-A proceedings secret. And then, many years later, with no time limitations whatsoever, 42 U.S.C. § 666(a)(5); 45 CFR § 305.24(b); Clark v. Jeter, 108 S.Ct. 1910 (1988), these states may initiate Title IV-D filiation proceedings, when most convenient to the states and with the greatest disadvantage to putative fathers and inconvenience to welfare families and children. Through these delays, and the withholding of Title IV-A notice, states may suppress information from putative fathers in such manner that they are not encouraged to seek timely legal advice. This means that they may, as has happened to these putative fathers, lose the opportunity to assume their responsibilities as parents in a timely fashion.

Finally, as if to burden and further alienate these unwed fathers, trial courts at the Title IV-D stage may impose judgments against these fathers requiring them to pay thousands of dollars for support which has accrued during the pre-notice period. Once the state has established paternity in this manner, the damage cannot be undone. Any hope of uniting or bonding these unwed fathers with their children is irretrievably lost, for no good reason. And judicial review to correct these injustices is precluded by the Oregon Court of Appeals' ruling.

The power of the state, to exclude putative fathers from state processes affecting the welfare family, must be brought within Fourteenth Amendment constraints by this Court. Only then will the Fourteenth Amendment rights of citi-

zens, including members of the welfare family, be preserved.

II. THE CONFLICTS ARE SUBSTANTIAL.

The Oregon Court of Appeals' ruling is in direct conflict with a ruling of the Ninth Circuit Court of Appeals. The Ninth Circuit adopted the argument of the State of Oregon that the putative fathers, as such, "have an adequate opportunity to raise their federal constitutional claims in the state court proceedings" and applied the Younger abstention doctrine in dismissing their federal constitutional claims. Kitchens v. Bowen, supra, 825 F.2d at 1342. But the Oregon Court of Appeals, cognizant as it was of the Ninth Circuit's holding, held just the opposite: that putative fathers, as such, have no opportunity to raise federal constitutional claims.

Putative fathers' constitutional claims relate to the loss of their ability to parent the out-of-wedlock children due to the lack of Title IV-A notice. Putative fathers' constitutional and factual claims in Title IV-D proceedings concern circumstances which would not make establishment of paternity in the child's best interests. But the Oregon Court of Appeals held that only adjudicated fathers, and not putative fathers, may raise these claims. Thus, a determination of paternity, first, without consideration of these claims, which are relevant to the determination of paternity itself, simply means that putative fathers are denied a meaningful opportunity to raise the very federal constitutional claims in state court that the Ninth Circuit assumed they had an opportunity to raise. These puta-

tive fathers request this Court to determine their rights as putative fathers to meaningfully assert these claims during the adjudication of paternity -- an issue left undetermined by both the Ninth Circuit and the Oregon Court of Appeals.

Most importantly, however, the Oregon Court of Appeals' decision directly conflicts with decisions of this Court which have held that putative fathers have rights to assert federal constitutional claims. In Stanley v. Illinois, 405 U.S. 645 (1972), this Court held that a putative father had the right to question the constitutional validity of the State of Illinois dependency proceedings which summarily terminated his parental rights, even though the State of Illinois refused to label this putative father as a "legal parent", and even though this putative

father failed to mitigate his injury or formalize his status by seeking custody of the children through guardianship or adoption proceedings. Stanley v. Illinois, supra 405 U.S. at 647-650.

In Lehr v. Robertson, 463 U.S. 248 (1983), this Court again recognized that a determination of biological paternity was not a prerequisite to examining whether the statutory scheme complied with the requirements of due process. A determination of biological paternity was never made in Lehr, and, in fact, the mother contended that the putative father was not the biological father. 463 U.S. at 250, n. 3.

Thus, the "issue of fact" found by the Oregon Court of Appeals was also present in Stanley and Lehr. Rather than remanding for a resolution of this factual

issue, this Court simply assumed for purposes of its analysis that the putative father was in fact the biological father. Here, even stronger reason exists for this Court to recognize the putative fathers' status, because the state is attempting to create, rather than sever, the parent-child relationship.

The Oregon Court of Appeals' decision, in holding that putative fathers "may not invoke claims of other persons who might be fathers..." (App A-13), creates yet another conflict with this Court's doctrine of "jus tertii". The court ignores this additional basis upon which putative fathers may assert their constitutional claims. See, Singleton v. Wulff, 428 U.S. 106, 114-116 (1976); Craig v. Boren, 429 U.S. 190, 193-194 (1976) rehearing denied 429 U.S. 1124 (1976);

National Association for Advancement of Colored People v. State of Alabama, 357 U.S. 449, 459 (1958). Here, a substantial relationship exists between putative fathers and biological fathers, as both suffer injuries, either actual or threatened, from the failure of the state to notify them of the Title IV-A application for assistance proceeding and later targeting them for simplified Title IV-D filiation proceedings. They both have a stake in the outcome of these proceedings. Putative fathers as well as biological fathers are also precluded, forever, by the State of Oregon from meaningfully asserting their federal constitutional rights. Finally, a need exists to avoid dilution of the rights of biological fathers that would otherwise result.

Furthermore, the Oregon Court of Appeals' decision also directly conflicts with federal statutes and regulations and the intent of Congress which mandate that paternity must be expeditiously established within the context of the AFDC program, consistent with the child's best interests. 42 U.S.C. §§ 602(a)(26)(B); 654(4)(A); 45 CFR §§ 232.42, 232.45(c), 302.31(a)(1)(2), 303.5(a)(1)(2)(b); S.Report 93-1356, 93rd Cong. 2d Sess. 8133, 8154-8155 (1974).

For example, the Oregon Court of Appeals ruling would preclude Mr. Kitchens, in the trial court below, from presenting the fact that the child's stepfather wishes to adopt the child and that the child's mother feels that it would not be in the child's best interest to have any contact with Mr. Kitchens. The shock,

emotional trauma and humiliation faced by the mother and child in this set of circumstances may preclude establishment of paternity under the federal regulations. 45 CFR §§ 232.42; 303.5(b).

In addition to conflicting with the federal AFDC standards precluding establishment of paternity, the Oregon Court of Appeals' holding also conflicts with an emerging, modern trend in state jurisdictions which has redefined the purpose of filiation proceedings.

The court's holding, by precluding putative fathers from raising federal constitutional defenses to filiation proceedings, creates an irrebuttable presumption that an adjudication of paternity is always in the best interests of the child. This irrebuttable presumption is in direct conflict with state jurisdictions which

hold that such a presumption is legally incorrect. See, e.g., In re Paternity of D.L.H., 142 Wis.2d 606, 419 N.W.2d 283, 286 (1987); McDaniels v. Carlson, 108 Wash.2d 299, 738 P.2d 254 (1987). As the Washington Supreme Court explained:

> "A paternity suit, by its very nature, threatens the stability of the child's world. * * * It may be true that a child's interests are generally served by accurate, as opposed to inaccurate or stipulated, paternity determinations. (citations omitted) However, it is possible that in some circumstances the child's interests will be even better served by no paternity determination at all. (citations omitted) The best interests of the child standard does not entitle the court to presume that paternity determination is automatically in the child's best interest." McDaniels v. Carlson, supra, 738 P.2d at 621 (emphasis added).

There is an established principle throughout the United States that the object of a paternity determination is the welfare of the child and the child's best interests:

> "'The old conception of paternity proceedings as being designed chiefly to spare the public the expense of supporting the child has been replaced by a more enlightened view. Courts now hold that the chief purpose of the paternity proceeding is to secure the health, welfare and happiness of the child. The best interests of the child have been established as the paramount criteria for determining the relationship between the child and his biological parents.'" Ettore I. v. Angela D., 127 A.D.2d, 6, 513 N.Y.S.2d 733, 739 (1987).

This Court has also adopted the view that the "best interests of the child" standard is appropriately applied in proceedings involving the status of a child born out-of-wedlock. See, e.g., Quilloin v. Walcott, 434 U.S. 246, 254-255 (1978).

Furthermore, most state jurisdictions, in private filiation proceedings, allow parties to assert defenses such as equitable estoppel, as well as consideration of the best interests of the child, to reject untimely filiation proceedings

which threaten to introduce a stranger into the child's life. See, e.g., In re Paternity of D.L.H., supra; McDaniels v. Carlson, supra; Markert v. Behm, ___ Minn App ____, 394 N.W.2d 239, 244 (1986); P.B.C. v. B.H., 396 Mass. 68, 483 N.E.2d 1094, 1097-98 (1985); Michelle W. v. Ronald W., 39 Cal.3d 354, 216 Cal. Rptr. 748, 703 P.2d 88, 93 (1985); A v. X,Y,&Z, ___ Wyo ___, 641 P.2d 1222, 1225, 1227 (1982); Happel v. Mecklenburger, 101 Ill. App.3d 107, 56 Ill. Dec. 569, 427 N.E.2d 974, 983 (1981). Some of these cases deal with the rights of putative fathers to bring filiation proceedings where the children have been statutorily presumed legitimate. This Court now has before it such a case. Michael H. v. Gerald D., 191 Cal. App.3d 995, 236 Cal. Rptr. 810 (1987)

cert granted (Docket No. 87-746, 1987 October Term).

Two justices of the Oregon Supreme Court recently observed that Oregon's Title IV-D procedures are chiefly deficient because the child's best interests are given no consideration in Title IV-D proceedings. Since the child is not made a party to the proceeding, the proceedings, seeking to introduce a stranger into the welfare family, "may humiliate (the mother) and the child and destroy existing relationships." State of Oregon ex rel AFSD v. Tuttle, 304 Or 270, 744 P.2d 990, 992 (1987) (J. Linde and Gillette, concurring). And Dr. Emlen, a child welfare expert, also concludes that delayed state action in relating a putative father with his out-of-wedlock child creates "conflict

and confusion regarding what that relationship represents." (App C-4).

All of the above-noted conflicts have major implications for the accomplishment of the goals of the Social Security, AFDC program, which seeks to assist dependent children while creating parent-child bonds. 42 U.S.C. §§ 601. The conflicts present questions of first impression for determination by this Court.

III. THE ISSUES HAVE NATIONAL IMPORTANCE

Of national importance is the power of the state to exercise its discretion in holding in abeyance and restricting the constitutional rights of hundreds of thousands of its citizens involved in a cooperative federal-state Social Security AFDC program designed to assist needy children. In expanding the state's discretionary power, the Oregon Court of

Appeals has held that putative fathers, as such, have no constitutional rights to Title IV-A notice. Important considerations, such as the needy child's best interests, have been totally subordinated to the state's interest in collecting money. The exercise of the state's power in this manner becomes detrimental to the harmonious functioning of the Social Security AFDC program itself.

Of equal national importance is the need for this Court's further definition of the constitutional rights of putative fathers. This Court has formulated the principles for determining the constitutional rights of putative fathers, in cases where termination of their parental rights are implicated, from Stanley v. Illinois, supra, to Lehr v. Robertson, supra. Now the opposite situation pre-

sents itself. Petitioners are among hundreds of thousands of putative fathers each year who are secretly involved, without their knowledge, in a governmental welfare program seeking to unite putative fathers with out-of-wedlock children. The rights of putative fathers become implicated the moment applicants are required to assign their support rights to the state and to identify the putative fathers on government forms as responsible for paying support for the children, and the government targets them for filiation prosecution. 45 CFR §§ 232.11(a)(1), 232.12(a)(1)(2); ORS 418.042.

There is substantial need for this Court to grant this Writ and to establish the constitutional bounds for the exercise of the state's discretion with relationship to the constitutional rights of puta-

tive fathers to due process and equal protection.

A. PUTATIVE FATHERS POSSESS A LEGALLY PROTECTED FOURTEENTH AMENDMENT DUE PROCESS LIBERTY INTEREST AT THE TITLE IV-A AFDC APPLICATION FOR ASSISTANCE STAGE, WHICH PROVIDES THE BASIS FOR MAKING THE FEDERAL CLAIMS IN THE TITLE IV-D PROCEEDINGS.

The "opportunity interest" of putative fathers finds its genesis in the Title IV-A AFDC program goal of strengthening the welfare family, 42 U.S.C. § 601, and in three of this Court's cases: Stanley v. Illinois, supra; Caban v. Mohammed, 441 U.S. 380 (1979); and Lehr v. Robertson, supra. In Lehr, this Court, in finding that the significance of the blood relationship is more limited, presupposed an opportunity to grasp parental responsibility:

> "The significance of the biological connection is that it offers the natural father an opportunity that no other male possesses to develop a relationship with his offspring. If

> he grasps that opportunity and accepts some measure of responsibility for the child's future, he may enjoy the blessings of the parent-child relationship and make uniquely valuable contributions to the child's development." Lehr v. Robertson, supra, 463 U.S. at 262.

This Court, in Lehr, recognized that the putative father's "opportunity interest" was entitled to constitutional protection, but concluded that New York's procedure adequately protected that interest. In accordance with the Lehr decision, other courts have recognized that unwed fathers possess "an opportunity interest to develop a relationship with their children which is constitutionally protected," which interest "begins at conception and endures probably throughout the minority of the child." In Re Baby Girl Eason, 257 Ga. 292, 358 S.E.2d 459, 462 (1987); Finnerty v. Boyett, 469 S.2d 287, 292 (La App 2d Cir 1985).

Contrasting with Lehr v. Robertson, supra, here, there exists a program of cooperative federalism within which the "opportunity interest" continues from the Title IV-A stage to state initiated Title IV-D filiation proceedings. The force of governmental action to establish a legal and financial relationship between the father and child presupposes that the state seeks the creation of a relationship between the father and the child, and, hence, the perpetuation of an already existing "opportunity interest." The "opportunity interest," fundamentally, represents the opportunity to have a timely determination of paternity made consistent with the child's best interests.

Even if the putative father is not, in fact, the biological father, he still has a protected "opportunity interest"

arising out of the fact that the mother-applicant, at the Title IV-A stage, states that she <u>believes</u> him to be the child's father. 45 CFR §§ 232.12(a)(1); ORS 418.042. That belief gives the putative father the opportunity to act as a responsible parent (and possibly become part of the family unit) even if he is not in fact the biological father of the child. The State of Oregon acknowledges that fact by allowing putative fathers to be legally recognized as "parent" without any scientific proof of biological paternity. See, e.g., ORS 109.092 (paternity through voluntary acknowledgment during pregnancy); ORS 109.070(5) (joint acknowledgment of paternity); ORS 109.070(1)(3) (marriage).

Clearly, the force of governmental action to unite putative fathers with out-of-wedlock children is sufficient, alone,

to give rise to the putative fathers' "opportunity interest." However, the "opportunity interest" arises for yet another reason. "Opportunity interests" of putative fathers to parent are protected constitutional interests because of the very nature of relationships within the family unit. In Lehr v. Robertson, supra, 463 U.S. at 258, this Court stated that "the Court has found that the relationship of love and duty in a recognized family unit is an interest in liberty entitled to constitutional protection." Such a relationship within a family unit may be based upon the mother's belief that the putative father is the actual biological father; it is not dependent upon proof of biological paternity alone.

The attributes of a family relationship, which this Court has accorded con-

stitutional protection, Roberts v. United States Jaycee's, 468 U.S. 609, 619-620 (1984), are equally present when the person acting as father is not in fact the biological father:

> "[T]he importance of the familial relationship, to the individuals involved and to the society, stems from the emotional attachments that derive from the intimacy of daily association, and from the role it plays in 'promot[ing] a way of life' through the instruction of children * * * as well as from the fact of blood relationship." Smith v. Organization of Foster Families for Equality and Reform, 431 U.S. 816, 844 (1977) (quoting Wisconsin v. Yoder, 406 U.S. 205, 231-233 (1972)) (emphasis added).

The Oregon Court of Appeals holding, that putative fathers have no constitutional right to notice, completely overlooks the reality of relationships within the family unit, including the shared interests of putative fathers and children. Although a putative father may not, in fact, be a child's biological father, upon being

given timely notice, he may become that child's legal parent.

Thus, the reasons for protecting the substantial and fundamental liberty interests, which are implicated at the Title-A application for assistance stage, form the basis for putative fathers' Title IV-D claims, which interrelate with the child's best interests. The interests are compelling and are present whether or not the putative father is in fact the biological father of the child.

B. PUTATIVE FATHERS POSSESS A LEGALLY PROTECTED FOURTEENTH AMENDMENT DUE PROCESS PROPERTY INTEREST AT THE TITLE IV-A STAGE, WHICH INTERRELATES WITH THE "OPPORTUNITY INTEREST."

That specific property right of the putative fathers which is implicated is " * * * the primary interest * * * in avoiding the serious economic consequences that flow from a court order that estab-

lishes paternity and its correlative obligation to provide support for the child." Rivera v. Minnich, 107 S.Ct. 3001, 3005, (1987).

The due process property interests (and rights to equal protection) are premised, in part, upon the putative father's duty or obligation to support the child. The putative father's property interests exist independently from a Title IV-D filiation and support order. As this Court has stated, "[t]he actions of judges neither create nor sever genetic bonds." Lehr v. Robertson, supra, 463 U.S. at 261. In Oregon the putative father's property interests arise at the child's birth and are further implicated at the Title IV-A stage, because the obligation to support the child arises at the child's birth, and not by virtue of a judge's decree. ORS

109.010; 109.060; Haxton and Haxton, 299 Or. 616, 705 P.2d 721 (1985); State ex rel AFSD v. McDonald, 42 Or. App. 793, 601 P.2d 875, 876 (1979).

Putative fathers have a constitutional due process property right to Title IV-A notice, because of their entitlement to rectify the needs of the children by coming forward and acknowledging paternity and raising the children, or to mitigate "the serious economic consequences" by beginning to pay some support for the children. See, e.g., Gresham v. Georgia Dept. of Human Resources, 257 Ga. 747, 363 S.E.2d 544 (1988); City of Clairmont v. Truell, 126 N.H. 30, 489 A.2d 581 (1985).

And the state's earliest action in seeking payment of child support by the putative father, through a Title IV-A notice, provides "the father a crucial

means of participating in the upbringing of the child" -- the ability to develop a relationship with his child -- which in turn forms the basis of the "opportunity interest." See Bowen v. Gilliard, 107 S.Ct. 3008, 3026 (1987), (J. Brennan and Marshall dissenting).

Thus, the reasons for protecting the substantial property interests of putative fathers at the Title IV-A stage are also compelling, because those interests inter-relate with their "opportunity interests." Protection of these interests can only strengthen the chances of developing a healthy relationship between parent and child.

C. THE STATE OF OREGON POLICY OF NOTIFYING MARRIED FATHERS OF TITLE IV-A AFDC APPLICATION FOR ASSISTANCE PROCEEDINGS, WHILE NOT SO NOTIFYING PUTATIVE FATHERS, VIOLATES THE RIGHTS OF PUTATIVE FATHERS TO EQUAL PROTECTION UNDER THE FOURTEENTH AMENDMENT, AND PROVIDES BASIS FOR THEIR TITLE IV-D CLAIMS.

The practice of the State of Oregon, as noted by the Oregon Court of Appeals, where Title IV-A notice is sent to married fathers but not to unmarried fathers (App A-8, 9), constitutes a capricious abuse of discretion which advances no legitimate state purpose. Significantly, the state, in the trial court below, offered no compelling reason why notice should not be provided to all putative fathers. Such unequal treatment constitutes a policy which is not rationally related to achieving the purposes of the federal-state AFDC program, namely the ascertainment of all of the child's resources "from whatever source derived." 42 U.S.C. §§ 602(a)(7)(A); ORS 418.045(1)(a).

In addition, if a notice is not sent to putative fathers, they do not have access to the same information given to

married fathers, and, hence, will not be prompted by the state to make inquiry as to their responsibilities and "opportunity interests."

Because fundamental rights of putative fathers as well as biological fathers are implicated at the Title IV-A stage, the state is required to show a compelling state interest in the different treatment. Harper v. Virginia Board of Elections, 383 U.S. 663, 670 (1966). However, even under the minimal scrutiny test which is applied to classifications created by welfare legislation, Califano v. Aznavorian, 439 U.S. 170 (1978), or the intermediate scrutiny test, Clark v. Jeter, supra, 108 S.Ct. at 1914, there is no rational basis for upholding the State of Oregon's notice policy.

D. FAILURE OF THE STATE TO PROVIDE TITLE IV-A NOTICE TO PUTATIVE FATHERS DEPRIVES THEM OF THEIR FOURTEENTH AMENDMENT PROCEDURAL DUE PROCESS RIGHTS AND PROVIDES BASIS FOR THEIR TITLE IV-D CLAIMS.

Procedural due process insures that the property rights and "opportunity interests" of putative fathers can be protected at a meaningful time and in a meaningful manner. Goldberg v. Kelly, 397 U.S. 254, 267 (1970); Armstrong v. Manzo, 380 U.S. 545, 552 (1965). The granting of assistance to the welfare family through a federal-state program, involving determinations which can ultimately lead to the imposition of new parent-child bonds, demands procedural due process for the putative fathers whose rights are implicated. Little v. Streater, 452 U.S. 1, 13 (1981); Fuentes v. Shevin, 407 U.S. 67, 80-81 (1972). In this Social Security program, putative fathers become targeted

for filiation prosecution at the Title IV-A stage and the adversary nature of the relationship commences at the Title IV-A stage when the Title IV-A agency makes a determination that Title IV-A enforcement action is in the child's best interest and will occur. 42 U.S.C. §§ 602(a)(26)(B); 654(4)(A); 45 CFR §§ 232.11(a)(1); 232.12(a)(1); 232.42; 232.45(c); 302.31(a)(1)(2); 303.5(a); ORS 418.042. Immediately, then, putative fathers have a "right to know" that (1) they have been named as parties responsible for providing support, on state AFDC forms, (2) that they are targeted for filiation prosecution at some time in the future, and (3) that, upon being targeted for filiation prosecution, they have need to consult with legal counsel to become informed of their rights under state law.

The omission of AFSD to provide notice to fathers at the Title IV-A stage, together with the lack of an alternative mechanism to preserve their right to receive notice, is procedurally inadequate under the tests developed by this Court in Mathews v. Eldridge, 424 U.S. 319, 335 (1976); See also, Lehr v. Robertson, supra, 463 U.S. 263-264.

With respect to the timing of notice, the governing rule is that notice "must be granted at a time when the deprivation can still be prevented." Fuentes v. Shevin, supra, 407 U.S. at 81. Here, when the protected liberty interest is properly identified as the "opportunity interest" in forming a parent-child relationship consistent with the welfare child's best interests, it becomes clear that deprivation of that interest can only be pre-

vented by requiring the state to provide notice when state action first occurs, i.e., at the point when the mother's rights to child support must be assigned to the state by operation of law upon payment of AFDC benefits and she must identify the putative father. 45 CFR §§ 232.11(a)(1); 232.12(a)(1); ORS 418.Ø42.

The importance of protecting the "opportunity interest" is significant, as discussed. The risk of erroneous deprivation of that interest under the current procedure is enormous. In the Moore case, ten years elapsed between the time of assignment and the institution of the filiation proceeding. Imagine the shock of a putative father who first learns upon being served with a summons in a filiation proceeding that he may have fathered a child ten years ago. The opportunity to

attempt to develop a parent-child relationship in that instance is virtually gone, for no good reason.

Where the protected property interest is properly identified as the opportunity to rectify the needs of the child or mitigate the child support arrearage, it again becomes clear that deprivation of that interest can only be prevented by requiring the State of Oregon to provide notice at the Title IV-A stage.

The importance of protecting the putative father's property interest is also significant. Notice calculated to give putative fathers the opportunity to mitigate their child support obligations means that these fathers can financially plan for and support their welfare children. It also means that the fathers' income and resources can, as Congress

intended, be counted as resources for the children, 42 U.S.C. §§ 602(a)(7)(A); ORS 418.045(1)(a), leading to expeditious CSE welfare recapture. S.Report 98-387, 98th Cong., 2nd Sess. 2397, 2425 (1984).

Finally, timely notice from the state will also be calculated to give putative fathers the opportunity to verify their biological paternity in a timely fashion. Putative fathers will also not lose the ability to adequately prepare a defense for the filiation proceeding. Loss of material witnesses to the circumstances of conception, due to the passage of time, jeopardizes the ability to obtain a truly "accurate and just determination of paternity." See, Little v. Streater, supra, 452 U.S. at 14.

The state's interest in not providing notice immediately is minimal. The added

costs and administrative burden of providing notice, immediately, to all putative fathers would be relatively small, especially in light of the state's potential for earlier recapture of support debts with Title IV-A notice and the state's admission that notice is provided to absent fathers who are married to the mothers when the children were born.

The State of Oregon has provided no substitute procedural safeguards to protect the constitutional interests of fathers which are implicated at the Title IV-A stage. These putative fathers are not contending that due process requires the state to hold a full-blown hearing before AFDC benefits are paid. Notice in and of itself will protect the "opportunity interests" at stake here. Upon receiving notice, the burden will shift to

putative fathers to take action to protect their parental rights. Putative fathers can formally protect those rights in the State of Oregon by initiating filiation proceedings (ORS 109.125(1)(e)), marrying the mother (ORS 109.070(3)), or by filing a joint declaration of paternity (ORS 109.070(5)). They may also take informal steps to develop a relationship with the child. However, putative fathers can only take these steps if they are notified that they have fathered a child. When the state first becomes involved with the welfare family and can easily protect the "opportunity interest" and property interests at stake merely by providing notice, procedural due process requires that the state provide such notice.

Most importantly, the procedural due process rights at stake here are of na-

tional importance because of the interstate nature of the AFDC program. Even if a state, such as Georgia, (see, e.g., Gresham v. Georgia Dept. of Human Resources, supra), were to provide for such additional or substitute procedural notice safeguards, the risk of an erroneous deprivation of the property and liberty interests of putative fathers would still exist. The exigencies of our modern, mobile society mean that many individuals who receive AFDC assistance travel from state to state. A piecemeal, state-by-state notice remedy will not assure that putative fathers, living in states other than where Title IV-A AFDC assistance is granted, would receive notice. In order for the notice requirement to be dependable and to meet the requirements of procedural due process under the Fourteenth

Amendment, the decision to require notice must be uniform and national in scope.

E. THE OREGON COURT OF APPEALS DECISION, AS APPLIED TO FORECLOSE PUTATIVE FATHERS FROM RAISING CONSTITUTIONAL AND FACTUAL DEFENSES TO TITLE IV-D PATERNITY ACTIONS, DENIES THEM DUE PROCESS OF LAW.

This Court has stressed that "'[d]ue process requires that there be an opportunity to present every available defense.'" Lindsey v. Normet, 405 U.S. 56, 66 (1972).

These putative fathers possess substantive liberty and property interests and rights to equal protection, all of which rights and interests interrelate with the child's best interests. Because of the Oregon Court of Appeals' decision, loss of these constitutional rights may not be asserted by putative fathers as available, meritorious defenses when the courts determine the factual issue of

paternity in simplified, state-initiated Title IV-D filiation proceedings.

Allowing the putative father to assert meritorious constitutional defenses to state-initiated paternity proceedings "will not automatically compel a state to listen to (the putative father's) opinion of where the child's best interests lie," Lehr v. Robertson, supra, 463 U.S. at 262, nor will it preclude the trial court from determining that the putative father is obligated to pay support. It will allow the trial court to adjudicate paternity and to establish support obligations consistent with the child's best interests. The putative father's denial of paternity and assertion of defenses are not solely a "disavowal of any interest" in parenting, as alluded to in Rivera v. Minnich, supra, 107 S.Ct. at 3004. They are, in addition,

an assertion that his ability to parent has been damaged due to the lack of Title IV-A notice and subsequent loss of the "opportunity interest," and other circumstances, making establishment of paternity inconsistent with the child's best interests.

The Oregon Court of Appeals' decision fails to meet the procedural due process tests outlined by this Court in Mathews v. Eldridge, supra, 424 U.S. at 335. The court failed to consider the substantial private interests which are implicated, and which this Court has previously noted:

> "The private interests implicated here are substantial. Apart from the putative father's pecuniary interest in avoiding a substantial support obligation and liberty interest threatened by the possible sanctions for noncompliance, at issue is the creation of a parent-child relationship. This Court frequently has stressed the importance of familial bonds, whether or not legitimized by marriage, and accorded them constitutional protection. * * *

> Just as the termination of such bonds demands procedural fairness, * * * so too does their imposition. Through the judicial process, the State properly endeavors to identify the father of a child born out of wedlock and to make him responsible for the child's maintenance. Obviously, both the child and the defendant in a paternity action have a compelling interest in the accuracy of such a determination." Little v. Streater, supra, 452 U.S. at 13 (citations omitted).

Likewise, the child and the putative father in a paternity action both have a compelling interest in insuring that the paternity determination, itself, is in the child's best interest. This is so because the substantive due process "opportunity interest" is a shared interest between the putative father and the child and is a liberty interest which entitles the putative father and child to receive a timely and meaningful determination of whether or not a relationship between the putative

father and child is, indeed, in the best interests of the welfare child.

Next, the Oregon Court of Appeals failed to consider the enormous risk of an erroneous deprivation of the shared opportunity interests through existing simplified state-initiated filiation procedures. Under the Oregon statutory scheme, if the state initiates a paternity proceeding, ORS 109.125(1)(b), the issue of paternity is determined first. ORS 109.155(1). If paternity is adjudicated, then the court establishes support as a second phase to the proceeding. 109.155(4). The child, through its guardian, or its mother, are not made parties to the proceeding. A determination of custody and visitation rights may be made in a separate proceeding after paternity is established. ORS 109.175. AFSD is not required to give

notice to putative fathers prior to initiating filiation proceedings. ORS 418.042. Finally, the court may order the unwed father to pay pre-notice accrued support and birth costs that the Title IV-A agency has paid on behalf of the child. ORS 109.155(4).

Given the usual absence of the mother or child as parties in the simplified proceedings, and the state's admitted lack of standing to decide issues of custody and visitation, plus the state's refusal to divulge the whereabouts of the mother and child due to confidentiality considerations (ORS 418.130), the risk is enormous that the child's best interests will not be evaluated in a simplified adjudication of paternity proceeding. See, e.g., State ex rel AFSD v. Tuttle, supra, 744 P.2d at 991-992.

Typically, the mothers, as well as the putative fathers, are poor and unrepresented by legal counsel. In the absence of any additional or substitute procedural safeguards, such as compulsory joinder of the mothers or children through their guardians, as parties, to assure that the childrens' best interests are considered in these simplified state-initiated filiation proceedings, the risk of harming the child psychologically becomes even greater. Thus, the reasons are compelling for allowing putative fathers to invoke the trial court's consideration of where the child's best interests lie. Such a procedural safeguard will help to insure not only the justness of paternity decisions in Oregon, in terms of the child's well being, but will also insure that putative fathers are accorded a mean-

ingful filiation hearing. Little v. Streater, supra, 425 U.S. at 14.

Finally, the Oregon Court of Appeals failed to weigh the state's interests against any burdens that the substitute procedural requirement would entail. With regard to the state's interest, this Court has stated:

> "The State admittedly has a legitimate interest in the welfare of a child born out of wedlock who is receiving public assistance, as well as in securing support of the child from those legally responsible. In addition, it shares the interests of the child and the defendant in an accurate and just determination of paternity. *** Nevertheless, the State also has financial concerns; it wishes to have the paternity actions in which it is involved proceed as economically as possible. . . ." Little v. Streater, supra, 452 U.S. at 14. (citations omitted) (Emphasis added)

Here, the State of Oregon provides simplified, economic filiation hearings, but at the expense of denying to the putative fathers a meaningful "and just" oppor-

tunity to be heard. The added cost and administrative burden of providing putative fathers the opportunity to assert meritorious constitutional and factual defenses to Title IV-D paternity adjudications would be very small, especially in light of the predominate practice of state jurisdictions which allow equitable and factual defenses in private filiation proceedings, as noted.

This Court has stated that where the contestants are the state and the individual, the state's presence "would weigh in favor of imposing a disproportionate share of the risk of error upon it by requiring" extra procedural safeguards. Rivera v. Minnich, supra, 107 S.Ct. at 3005, n. 8. "Because the state has superior resources," 107 S.Ct. at 3005, and because these proceedings involve the creation of

the parent-child bond, the child's best interests take on a significance which overshadows the state's sole "interest in avoiding financial responsibility for children born out of wedlock." Rivera v. Minnich, supra, 107 S.Ct. at 3005, n. 8. Therefore, the state's monetary interest "'is hardly significant enough to overcome private interests as important as those here,'" Little v. Streater, supra, 452 U.S. at 16, namely, the assurance that circumstances relevant to the child's best interests will be considered by the trial court in adjudicating paternity.

An assessment of the Mathews v. Eldridge factors demonstrates that these putative fathers, under the Oregon Court of Appeals ruling, will not receive the meaningful process they are constitutionally due at the simplified Title IV-D

hearing. They have no opportunity to rebut the presumption that an adjudication of paternity is in the welfare child's best interests. They have no legal ability to assert the defense that they have suffered the loss of constitutional rights and interests, the loss of which is so severe as to make an adjudication of paternity inconsistent with the child's best interests. A putative father, deprived of Title IV-A notice and deprived of a meritorious Title IV-D defense, who faces the state as an adversary, absent the mother or welfare child as a party to the proceedings, "lacks 'a meaningful opportunity to be heard.'" Little v. Streater, supra, 452 U.S. at 16. This fundamental, federal right to due process will be lost unless it is vindicated by this Court.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

Philip F. Schuster, II
Counsel of Record
Roger F. Dierking
Counsel for Petitioners

April 7, 1989

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF OREGON

State of Oregon, Exrel ADULT & FAMILY SERVICES DIV) Respondent	ORDER DENYING REVIEW
v.	CA A42217
	SC S35765
KITCHENS, RONNIE OSCAR MOORE, JOHN FRANK DICKINSON, ROBERT W Petitioners	
ACLU FOUNDATION OF OREGON INC. Amicus curiae	

The Court has considered the petition for review and ORDERS that it be denied.

DATED: JANUARY 31, 1989.

/s/ Edwin J. Peterson
EDWIN J. PETERSON
CHIEF JUSTICE

Copies to:

Sylwester, Timothy A.	Attorney for: Respondent
Schuster, Philip F.	Attorney for: Petitioner
Bushong, Stephen K.	Attorney for: Amicus curiae

IN THE COURT OF APPEALS OF THE STATE OF OREGON

State of Oregon, Exrel ADULT & FAMILY SERVICES DIV Petitioner Appellant	) ORDER DENYING RECONSIDERATION
v.	)
KITCHENS, RONNIE OSCAR MOORE, JOHN FRANK DICKINSON, ROBERT W Respondents Respondents	) CA A42217 SC S35765

The Court of Appeals has considered the Petition for Review filed in this case as a Petition for Reconsideration and has, on DECEMBER 23, 1988, denied the petition. ORAP 10.10. The Supreme Court may now proceed to determine whether to grant review. The appellate court decision is not enforceable until the Supreme Court has completed its review of the petition. ORAP 11.03.

/s/ George M. Joseph
CHIEF JUDGE

Copies To:
Sylwester, Timothy A — Attorney for: Appellant
Schuster, Philip F II — Attorney for: Respondent

IN THE COURT APPEALS OF THE
STATE OF OREGON

STATE ex rel
ADULT AND FAMILY SERVICES DIVISION,
Appellant,
v.
KITCHENS,
Respondent.

STATE ex rel
ADULT AND FAMILY SERVICES DIVISION,
Appellant,
v.
MOORE,
Respondent.

STATE ex rel
ADULT AND FAMILY SERVICES DIVISION,
Appellant,
v.
DICKINSON,
Respondent.

(D8609-66495; D8501-60531; D8503-61914;
CA A42217 (Control); CA A42218)
(Cases Consolidated)

Appeal from Multnomah County Circuit Court.

Mercedes F. Deiz, Judge.

Argued and submitted October 28, 1987.

Timothy A. Sylwester, Assistant Attorney General, Salem, argued the cause for appellant. With him on the briefs were David Frohnmayer, Attorney General, and

Virginia L. Linder, Solicitor General, Salem.

Philip F. Schuster, II, Portland, argued the cause for respondent. With him on the brief was Roger F. Dierking, Portland.

Before Richardson, Presiding Judge, and Newman and Deits, Judges.

NEWMAN, J.

Reversed and remanded.

NEWMAN, J.

In each of three filiation actions, ORS 109.124 et seq, to establish paternity, obtain future child support and recover unpaid past support, Adult and Family Services Division (AFSD) appeals a summary judgment for respondent, the alleged father. The judgment dismissed the petition and barred AFSD from bringing the action.[1] In each case, AFSD assigns

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[1] The judgment apparently incorporates the order's provision that bars AFSD from bringing the action.

as error that the court granted respondent's motion for summary judgment. We reverse.

In each action, the affidavits that the parties submitted on the motions for summary judgment are substantially similar. Each mother gave birth to a child out of wedlock. Each applied for and received aid to dependent children (ADC) and assigned all of her support rights to the state. ORS 418.042(1).[2] On her application for assistance, each named one of the respondents as the father.

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[2] ORS 418.042(1) provides:

> "If [ADC] is paid and received for the support of a child, the rights to child support that any person may have for the child are deemed to have been assigned by operation of law to the Department of Human Resources. Notice of the assignment by operation of law shall be given to the applicant at the time of application for public assistance and shall be given to any obligee who may hold some interest in such support rights."

Although in his answer each putative father denied paternity, he neither denied nor admitted paternity in his affidavit or in any other document filed in the trial court or in this court or in any statement of his attorneys. Each affidavit, however, raises the issue of whether another man might be the father, because the affiant either asserted or implied that the mother was having sexual relations with other men at the time when the affiant had sexual relations with her.[3]

-----[3]

Moore's affidavit states:

"About one month after the party Barbara called me and told me she missed her period. I told her that I was not sure I had intercourse with her and she should check with the other persons she dated."

Dickinson's affidavit states:

"At the time I knew this woman, she stated to me that she was still seeing her ex-husband, that she was dating her dentist and was seeing another fellow."

Each mother asserted that the respondent was the father and that she had told him of his paternity shortly after she became aware that she was pregnant. Two respondents do not admit or deny that the mother told them that they were the fathers; one does deny it. Following the child's birth, each respondent had little, if any, contact with the child or its mother and did not provide any substantial support to the child.

In each case, AFSD did not promptly notify any respondent that the mother had named him as the father on her application for assistance or of her assignment

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[3] cont. -

Kitchen's affidavit states:
"After I became acquainted with the mother of the child born out of wedlock in November or December of 1981, I had sexual relations with her. The mother was living with her relatives at the time, in my opinion, she was having sexual relations with other men."

or of AFSD's payment of support for the child. Respondents learned of these events only when AFSD filed the filiation petitions, two and a half years, four years and ten years, respectively, after the mother's assignment. AFSD claimed that substantial back support payments had accrued against each respondent when AFSD filed the actions.

To obtain information relevant to a mother's eligibility for ADC benefits, AFSD sends its "Form 412 letter" to a father of a child born in wedlock. The letter states that "the case record indicates that you may have an interest in [the child]" and asks whether the recipient contributes any support or provides medical coverage for the child. Ordinarily, AFSB does not send the form letter to an alleged father of a child born out

of wedlock. It did not send a "Form 412 letter" to any of the respondents.

In each case, the trial court's order granting the motion for summary judgment recited that

> "there is no genuine issue as to any material fact as to the following matters, and accordingly the court finds as follows:
>
> "1. The mother designated respondent as the father when she applied for assistance or shortly thereafter;
>
> "2. The state did not notify the respondent when the mother applied for assistance or when the mother named respondent as designated father;
>
> "3. A substantial period of time elapsed with no association between the respondent and the child born out of wedlock;
>
> "4. The state notifies married fathers that the mother has applied for public assistance and does not so notify unmarried fathers."

It did not specifically hold that there was no genuine issue of material fact respecting paternity, but recited:

"[T]he lack of notice has deprived respondent of his guarantees to due process and equal protection under the 14th Amendment of the United States Constitution and under the Oregon Constitution; and

"The court having entered the above findings and conclusion of law and having further found that there is no genuine issue as to any material fact and that the respondent is entitled to judgment as a matter of law."

The order then granted the motion for summary judgment, recited that it "barred [AFSD] from bringing the * * * paternity action" and dismissed the action. Thereafter the court granted judgment for each respondent.

Each respondent asserts that AFSD denied him due process and equal protection under the Fourteenth Amendment and equal privileges and immunities under Article I, section 20, of the Oregon Constitution, and that estoppel bars AFSD's claims, because it failed to notify him

when the mother assigned her support rights and named him as father. He also asserts that his only effective remedy is just what the court did: dismiss the action and bar AFSD from bringing it.

Summary judgment may be granted where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. ORCP 47C; Christensen v. Murphy, 296 Or 610, 613, 678 P2d 1210 (1984). Here, there is a genuine issue of fact in each case respecting paternity. The affidavits do not establish that there is no genuine issue of fact respecting paternity. Moreover, the issue of paternity is material in each case. For example, if a respondent is not in fact a father, AFSD's failure to inform him to the contrary could not have deprived him of liberty or pro-

perty under the Due Process Clause of equal protection or of any privilege or immunity under Article I, section 20, of the Oregon Constitution.

Respondents, however, argue in effect that, even if paternity is a genuine issue of fact, it is not material. They assert that, if AFSD is not barred by estoppel from bringing the action, it will continue not to notify other designated fathers of children born out of wedlock of their paternity. To invoke estoppel, however, respondents must show detrimental reliance. See, Miltenberger v. Howard's Plumbing, 93 Or App 475, ___ P2d ___ (1988); Employment Div v. Western Graphics Corp., 76 Or App 608, 612, 710 P2d 788 (1985). Unless a respondent is a father, he could not have acted to his detriment in reliance on AFSD's failure to notify

him of that status. AFSD's failure to inform him that he is the claimed father could not harm him. On this record, respondents may not invoke claims of other persons who might be fathers. See Kelly v. Silver, 25 Or App 441, 452, 549 P2d 1134 (1976). Paternity is, therefore, material; and the court should not bar AFSD from seeking to determine at trial the factual question -- paternity -- which brings into play respondents' claims.

We must address one other issue. AFSD asserted below in opposition to the summary judgment motions that there were disputed issues of fact, but it did not identify them. Its brief here, however, states that

> "[t]he trial court's ruling left unresolved several disputed fact questions squarely presented in each case, such as to [sic] whether respondent was in fact the father of the child, whether he had actual notice of that fact,

> whether he had a support obligation with respect to the child that he failed to pay, and whether he should pay child support in the future."

Nonetheless, it assigns as error only that:

> "1. The trial court erred in granting respondents' motions for summary judgment.
>
> "2. The trial court erred in granting respondents' motions to dismiss the filiation proceedings."

It does not specifically assert that the court erred because there are genuine issues of material fact.

In this summary judgment proceeding, all of the parties ask us to reach the merits of their constitutional and estoppel arguments. On this record, we cannot. Even though AFSD may not have properly preserved the matter as error, it is apparent on the face of the record that paternity is a genuine issue of material

fact. See ORAP 7.19(5).[4] The court erred when it granted respondents' motions for summary judgment.

Because each judgment is reversed, respondents are not entitled to the judgments for attorney fees. Accordingly, it is not necessary to discuss further AFSD's third assignment of error.[5]

Reversed and remanded.

---

[4]AFSD's assignments of error are arguably broad enough to encompass the error.

[5]AFSD's third assignment of error is that the trial court erred in awarding respondents their attorney fees incurred in a collateral federal court action.

APPENDIX B

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH
Department of Domestic Relations

STATE OF OREGON, ex rel ADULT AND FAMILY SERVICES) DIVISION, Petitioner, and RONNIE OSCAR KITCHENS, Respondent.	NO. D8609-66495 JUDGMENT

Based upon the court's Order dated _____ dismissing the petition in this case, judgment is entered in favor of respondent Ronnie Oscar Kitchens and against the State and respondent is awarded judgment against the State as and for his reasonable attorney fees in the sum of $1,500.00 and for his costs and disbursements in the sum of $60.00.

Dated this 27 day of October, 1986.

/S/ Mercedes F. Deiz
Mercedes F. Deiz, Circuit Court Judge

Submitted by:

Philip F. Schuster, II OSB 72231
Of Attorneys for respondent

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH
Department of Domestic Relations

STATE OF OREGON, ex rel, ADULT AND FAMILY SERVICES DIVISION, Petitioner, and RONNIE OSCAR KITCHENS, Respondent.	NO. D8609-66495 ORDER GRANTING SUMMARY JUDGMENT AND OF DISMISSAL

On October 20, 1986 this court heard oral argument on respondent's motion for summary judgment. Petitioner appeared by and through Shelley K. McIntyre and Lawrence R. Young, Assistant Attorneys General, and respondent appeared by and through his attorneys Philip F. Schuster, II and Roger F. Dierking.

The court having heard argument of respective counsel, and the court having found that the pleadings, admissions and affidavits on file herein show that there is no genuine issue as to any material

fact as to the following matters, and accordingly the court finds as follows:

1. The mother designated respondent as the father when she applied for assistance or shortly thereafter;

2. The state did not notify the respondent when the mother applied for assistance or when the mother named respondent as designated father;

3. A substantial period of time elapsed with no association between the respondent and the child born out of wedlock;

4. The state notifies married fathers that the mother has applied for public assistance and does not so notify unmarried fathers.

The court enters the following conclusion of law:

1. That the lack of notice has deprived respondent of his guarantees to due process and equal protection under the 14th Amendment of the United States Constitution and under the Oregon Constitution; and

The court having entered the above findings and conclusion of law and having further found that there is no genuine issue as to any material fact and that the respondent is entitled to judgment as a matter of law and being fully advised in the premises, now therefore it is hereby

ORDERED that respondent's motion for summary judgment be and the same hereby is granted and it is

FURTHER ORDERED that petitioner is barred from bringing the within paternity action and this action shall be and hereby is dismissed.

Dated this 27 day of October, 1986.

/s/ Mercedes F. Deiz
Mercedes F. Deiz
Circuit Court Judge

Submitted By:

/s/ Phil Schuster
Philip F. Schuster, II OSB 72231
Of Attorneys for respondent

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH
Department of Domestic Relations

STATE OF OREGON, ex rel, ADULT AND FAMILY SERVICES DIVISION, Petitioner, and JOHN FRANK MOORE, Respondent.	NO. D85Ø1-6Ø531 CONSOLIDATED
STATE OF OREGON, ex rel ADULT AND FAMILY SERVICES DIVISION, Petitioner, and ROBERT W. DICKINSON, Respondent.	NO. D85Ø3-61914 JUDGMENT

Based upon the court's Order dated September 22, 1986 dismissing the petitions in these cases, judgment is entered in favor of respondents Moore and Dickinson and against the State and respondents are awarded judgment against the State as and for their reasonable attorney fees in the sum of $12,211.6Ø and

for their costs and disbursements in the sum of $144.

Dated this 27 day of October, 1986.

/S/ Mercedes F. Deiz
Mercedes F. Deiz, Circuit Court Judge

Submitted By:

Philip F. Schuster, II OSB 72231
Of Attorneys for respondents

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH
Department of Domestic Relations

STATE OF OREGON, ex rel, ADULT AND FAMILY SERVICES) DIVISION, Petitioner, and JOHN FRANK MOORE, Respondent.	NO. D85Ø1-6Ø531 CONSOLIDATED
STATE OF OREGON, ex rel ADULT AND FAMILY SERVICES) DIVISION, Petitioner, and ROBERT W. DICKINSON, Respondent.	NO. D85Ø3-61914 ORDER GRANTING SUMMARY JUDGMENT AND OF DISMISSAL

On September 1Ø, 1986 this court heard oral argument on respondent's motion for summary judgment. Petitioner appearing by and through Shelley K. McIntyre, Assistant Attorney General, and respondents appearing by and through their attorney Philip F. Schuster, II. Also

present was Roger F. Dierking, of attorneys for respondent.

The court having heard argument of respective counsel, and the court having found that the pleadings, admissions and affidavits on file herein show that there is no genuine issue as to any material fact as to the following matters, and accordingly the court finds as follows:

1. The mothers designated respondents as the fathers when they applied for assistance or shortly thereafter;

2. The state did not notify the respondents when the mothers applied for assistance or when the mothers named respondents as designated fathers;

3. A substantial period of time elapsed with no association between the

respondents and the children born out of wedlock;

4. The state notifies married fathers that the mother has applied for public assistance and does not so notify unmarried fathers.

The court enters the following conclusion of law:

1. That the lack of notice has deprived respondents of their guarantees to due process and equal protection under the 14th Amendment of the United States Constitution and under the Oregon Constitution; and

The court having entered the above findings and conclusion of law and having further found that there is no genuine issue as to any material fact and that the respondents are entitled to judgment as a

matter of law and being fully advised in the premises, now therefore it is hereby

ORDERED that respondents' motion for summary judgment be and the same hereby is granted and it is

FURTHER ORDERED that petitioner is barred from bringing the within paternity actions and these actions shall be and hereby are dismissed.

Dated this 22 day of September, 1986.

/s/ Mercedes F. Deiz
Mercedes F. Deiz
Circuit Court Judge

Submitted By:

/s/ Phil Schuster
Philip F. Schuster, II OSB 72231
Of Attorneys for respondents

APPENDIX C

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH
Department of Domestic Relations

STATE OF OREGON, ex rel ADULT AND FAMILY SERVICES DIVISION, Petitioner, and JOHN FRANK MOORE, Respondent.	NO. D85Ø1-6Ø531 CONSOLIDATED
STATE OF OREGON, ex rel ADULT AND FAMILY SERVICES DIVISION, Petitioner, and ROBERT W. DICKINSON, Respondent.	NO. D85Ø3-61914 SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF RESPONDENTS' MOTIONS FOR SUMMARY JUDGMENT

STATE OF OREGON)
) ss.
County of Multnomah)

I, ARTHUR C. EMLEN, being first duly sworn on oath, depose and say as follows:

That I am a Professor of Social Work at Portland State University and head of the Regional Research Institute for Human Services at Portland State University. I

received my bachelor of arts degree in philosophy from UCLA in 1953 and my masters degree of social welfare in 1958 from UCLA. I received my doctorate degree from Tulane University in 1965. My doctorate dissertation involved social work research.

I was a post-doctoral fellow at the University of California at Berkeley. I joined the faculty of Portland State University in the fall of 1965 as a Child Welfare Specialist. I have conducted studies of child care for 23 years and I have been principle investigator of a series of research projects concerning the need for family permanency for children who enter the child welfare programs.

A copy of my resume is attached to this affidavit and incorporated herein by this reference.

I am familiar with the case filed in the United States District Court for the District of Oregon entitled Kitchens, et al vs. Bowen, et al, Case Number 85-1815JU. Many of the issues in this case concerning the lack of notice to designated parents are the same issues which I have been involved with in my research concerning children involved in foster care planning and child welfare programs.

In all child welfare matters the key to development of children is clarity with regard to whom they belong. It is illogical to assume that a relationship exists when, in fact, it does not and there has been no opportunity given for such a relationship to develop. Based upon my training and experience, it is my opinion that the passage of time where no contact

occurs between a natural parent and his child will make it less likely that the natural parent will develop a meaningful parent-child relationship with that child. Therefore, if a natural parent is forced to have an association with a child after the passage of a considerable period of time, without prior contact, in my opinion, this can force the natural father and child to experience conflict and confusion regarding what that relationship represents. In my opinion, there is less basis for a parent-child relationship after the passage of time than there is if the father is encouraged to take a parenting role at or near the time of the child's birth in a timely manner.

In my opinion, for the state to fail to settle the issue of a parent-child relationship at the first instance, when

assistance is provided, is detrimental to the child and promotes instability in family relationships.

In my opinion, if the state fails to join the issue of the father's ability and desire to parent the child and to settle this issue with legal clarity at the first instance, when assistance is provided by the state, then the passage of time before this issue is settled will mean that the natural father is less likely to want to parent the child. If the natural father is desirous of parenting the child in the first instance, the passage of time will mean the loss, to the father, of the ability to develop a parenting bond and relationship with the child, assuming that it is desirable that the natural father nurture such a parent-child relationship.

In my opinion, if the state has determined that it is in the child's best interest to bring a paternity action and to obtain support for the child, then it is imperative that these rights and relationships, including the right of the father to obtain custody of the child or visitation rights with that child, be handled as expeditiously as possible from the time that assistance is first given to the mother.

If it is in the child's best interest to establish the child's paternity then it is far better that this paternity be established as quickly as possible, in the first instance, rather than to wait many years before bringing a paternity action to establish these rights and relationships.

Assuming that a natural father has an ability to parent a child, then the loss of that ability to parent, namely the ability to form a bond and a relationship with the child and to have association with that child, is a loss which is devastating to both the natural father and the child. The right to grasp the opportunities of parenthood, assuming that the natural father has an ability to parent, is a fundamental right and an important right in the context of family relationships.

I make this affidavit in good faith and in support of the within motion for summary judgment.

/s/ Arthur C. Emlen
Dr. Arthur C. Emlen

Subscribed and Sworn before me this

5th day of September, 1986.

/s/ Philip F. Schuster II
Notary Public for Oregon
My Commission Expires: 4-9-87

(Dr. Emlen's resume not reproduced)

APPENDIX D

CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment to the United States Constitution provides in relevant part:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTORY PROVISIONS IN PERTINENT PART

42 USC § 601. Authorization of appropriations

> "For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal

independence consistent with the maintenance of continuing parental care and protection, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children.

42 USC § 602. State plans for aid and services to needy families with children; contents; approval by Secretary; records and reports; treatment of earned income advances

"(a) Contents

"A State plan for aid and services to needy families with children must --

(7) except as may be otherwise provided in paragraph (8) or (31) and section 615 of this title, provide that the State agency --

(A) shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid;

* * * * *

"(26) provide that, as a condition of eligibility for aid, each applicant or recipient will be required --

"* * * * *

"(B) to cooperate with the State (i) in establishing the paternity of a child born out of wedlock with respect to whom aid is claimed, and (ii) in obtaining support payments for such applicant and for a child with respect to whom such aid is claimed, or in obtaining any other payments or property due such applicant or such child, unless (in either case) such applicant or recipient is found to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the child on whose behalf aid is claimed; * * *"

42 USC § 654. State plan for child and spousal support

"A state plan for child and spousal support must --

* * * * *

(4) provide that such State will undertake --

"(A) in the case of a child born out of wedlock with respect to whom an assignment under section 602(a)(26) of this title is effective, to establish the paternity of such child, unless the agency administering the plan of the State under part A of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so, and

* * * * *"

42 USC § 666. Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement

"(a) Types of procedures required

"In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

* * * * *

"(5) Procedures which permit the establishment of the paternity of any child at any time prior to such child's eighteenth birthday.

* * * * *"

REGULATORY PROVISIONS IN PERTINENT PART

45 CFR § 232.11. Assignment of rights to support.

"(a) The State plan must provide that:

(1) As a condition of eligibility for assistance, each applicant for or recipient of AFDC shall assign to the State any rights to support from any other person as such applicant or recipient may have: * * *"

45 CFR § 232.12. Cooperation in obtaining support.

"The State plan must meet all requirements of this section.

"(a) The plan shall provide that as a condition of eligibility for assistance, each applicant for or recipient of AFDC will be required to cooperate (unless good cause for refusing to do so is determined to exist in accordance with §§ 232.40 through 232.49 of this chapter) with the State in:

"(1) Identifying and locating the parent of a child for whom aid is claimed;

"(2) Establishing the paternity of a child born out of wedlock for whom aid is claimed;

* * * * *"

CFR § 232.42 Good cause circumstances.

"(a) Circumstances under which co-operation may be 'against the best interests of the child.' The plan shall provide that the State or local agency will determine that cooperation in establishing paternity and securing support is against the best interests of the child only if:

"(1) The applicant's or recipient's cooperation in establishing paternity or securing support is reasonably anticipated to result in:

"(i) Physical harm to the child for whom support is to be sought;

"(ii) Emotional harm to the child for whom support is to be sought;

"(iii) Physical harm to the parent or caretaker relative with whom the child is living which reduces such person's capacity to care for the child adequately;

"(iv) Emotional harm to the parent or caretaker relative with whom the child is living, of such nature or degree that it reduces such person's capacity to care for the child adequately; or

"(2) At least one of the following circumstances exists, and the State or local agency believes that because of the existence of that circumstance, in the particular case, proceeding to establish paternity or secure support would be detrimental to the child for whom support would be sought.

"(i) The child for whom support is sought was conceived as a result of incest or forcible rape;

"(ii) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction; or

"(iii) The applicant or recipient is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish him for adoption, and the discussions have not gone on for more than 3 months.

"(b) Physical harm and emotional harm defined. Physical harm and emotional harm must be of a serious nature in order to justify a finding of good cause under paragraph (a)(1) of this section. A finding of good cause for emotional harm may only be based upon a demonstration of an emotional impairment that substantially affects the individual's functioning.

"(c) Special considerations related to emotional harm. The plan shall provide that, for every good cause determination which is based in whole or

part upon the anticipation of emotional harm to the child, the parent or the caretaker relative, as provided for in paragraphs (a)(1) (ii) and (iv) of this section, the State or local agency will consider the following:

"(1) The present emotional state of the individual subject to emotional harm;

"(2) The emotional health history of the individual subject to emotional harm;

"(3) Intensity and probable duration of the emotional impairment;

"(4) The degree of cooperation to be required; and

"(5) The extent of involvement of the child in the paternity establishment or support enforcement activity to be undertaken."

45 CFR § 232.45. Notice to the IV-D Agency

"The plan shall provide that:

"*****

"(c) The State and local agency will promptly report to the IV-D agency all cases in which it has determined that there is not good cause for refusal to cooperate."

45 CFR § 302.31. Establishing paternity and securing support.

"The State plan shall provide that:

"(a) The IV-D agency will undertake:

"(1) In the case of a child born out of wedlock with respect to whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective, to establish the paternity of such child; and

"(2) In the case of any individual with respect to whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective to secure support for a child or children from any person who is legally liable for such support, using State laws and reciprocal arrangements adopted with other States when appropriate. Effective October 1, 1985, this includes securing support for a spouse or former spouse who is living with the child or children, but only if a support obligation has been established for that spouse and the child support obligation is being enforced under the title IV-D State plan."

42 CFR § 303.5. Establishment of paternity.

"(a) For all cases referred to the IV-D agency or applying under § 302.33 of this chapter in which paternity has

not yet been established, the IV-D agency must:

"(1) Attempt to establish paternity by court order or other legal process established under State law; or

"(2) Establish paternity by acknowledgment if under the State law such acknowledgment has the same legal effect as court-ordered paternity, including the right to benefits other than child support.

"(b) The IV-D agency need not attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the IV-D agency, it would not be in the best interests of the child to establish paternity."

42 CFR §§ 305.24. Establishing paternity.

"For the purposes of this part, in order to be found to be in compliance with the State plan requirement that the State undertake the establishment of paternity (45 CFR 302.31(a) and 302.33), a State must:

* * * * *

"(b) Have established and use written procedures for establishing the paternity of any child at least until the child's 18th birthday: * * * * *"

STATUTORY PROVISIONS IN PERTINENT PART

ORS 109.010 Duty of support.

"Parents are bound to maintain their children who are poor and unable to work to maintain themselves; and children are bound to maintain their parents in like circumstances."

ORS 109.060 Legal status and legal relationships where parents not married.

"The legal status and legal relationships and the rights and obligations between a person and the descendants of the person, and between a person and parents of the person, their descendants and kindred, are the same for all persons, whether or not the parents have been married."

ORS 109.070 Establishing paternity.

"The paternity of a person may be established as follows:

"(1) The child of a wife cohabiting with her husband who was not impotent or sterile at the time of the conception of the child, shall be conclusively presumed to be the child of her husband, whether or not the marriage of the husband and wife may be void.

"*****

"(3) By the marriage of the parents of a child after birth of the child.

"*****

"(5) By joint declaration of paternity filed with the Vital Statistics Unit of the Health Division of the Department of Human Resources in the form approved by the state registrar and with the fee prescribed in ORS 432.145. The Vital Statistics Unit shall prepare a new birth certificate under the procedure established by ORS 432.420.

"*****"

ORS 109.092 Establishing paternity by acknowledgment; mother surrendering child for adoption.

"When it is determined that a woman is pregnant with a child, the woman and any man to whom she is not married and with whom she engaged in sexual intercourse at approximately the time of conception have an obligation to recognize that the man may be the other person responsible for the conception. During the months of pregnancy, the man may join the woman in acknowledging paternity and assuming the rights and duties of expectant parenthood. If the man acknowledges paternity of the expected child and the woman denies that he is the father or refuses to join him in acknowledging paternity, the man may seek relief under ORS 109.125. If the woman wants the man to join her in acknowledging his paternity of the expected child and the man denies that he is the

father or refuses to join her in acknowledging paternity, the woman may seek relief under ORS 109.125. If after the birth of the child the mother decides to surrender the child for adoption and paternity has not been acknowledged as provided in ORS 109.070(5) or the putative father has not asserted his rights in filiation proceedings, the mother has the right without the consent of the father to surrender the child as provided in ORS 418.270 or consent to the child's adoption."

ORS 109.125 Initiation of proceedings.

"(1) Any of the following may initiate proceedings under this section:

"*****

"(b) Any state agency, if furnishing support to the mother for the benefit of the child or if furnishing services or assistance of any kind because of the birth, or impending birth, of the child;

"*****

"(e) A person claiming to be the father of a child born out of wedlock or of an unborn child who may be born out of wedlock; or

"******"

ORS 109.155 Conduct of trial; postponement; orders.

"(1) The court or the jury, in a private hearing, shall first determine the issue of paternity. If the respondent admits the paternity, such admission shall be reduced to writing, verified by the respondent and filed with the court. If the paternity is denied, corroborating evidence, in addition to the testimony of the parent or expectant parent, shall be required.

"*****

"(4) The court shall have the power to order either parent to pay such sum as it deems appropriate for the past and future support and maintenance of the child during its minority and while the child is attending school and the reasonable and necessary expenses incurred or to be incurred in connection with prenatal care, expenses attendant with the birth and postnatal care. The court may grant the prevailing party reasonable costs of suit, and reasonable attorney fees at trial and on appeal."

ORS 109.175 Determination of legal custody after paternity established.

"If paternity of a child born out of wedlock is established pursuant to a petition filed under ORS 109.125 or an order or judgment entered pursuant to ORS 109.124 to 109.230 or ORS 416.400 to 416.470, the parent with physical custody at the time of filing of the

petition or the notice under ORS 416.415 has sole legal custody until a court specifically orders otherwise. The first time the court determines who should have legal custody, neither parent shall have the burden of proving a change of circumstances. The court shall give primary consideration to the best interests and welfare of the child and shall consider all the standards set out in ORS 107.137."

ORS 418.042 Assignment of support rights and cooperation with Department of Human Resources; protection of legal rights.

(1) Aid, as defined in ORS 418.035(2), shall not be granted to, or on behalf of, any applicant, or recipient and for as long as the applicant or recipient refuses to assign to the Department of Human Resources any rights to support from any other person such applicant may have personally or in behalf of any other family member for whom the applicant is applying for or receiving aid, and which have accrued at any time such assignment is executed, or refuses to cooperate with the Department of Human Resources in establishing the paternity of a child born out of wedlock and in obtaining support or other payments or property due the applicant or the child. If aid is paid and received for the support of a child, the rights to child support that any person may have for the child are deemed to have been assigned by operation of law to the

Department of Human Resources. Notice of the assignment by operation of law shall be given to the applicant at the time of application for public assistance, and shall be given to any obligee who may hold some interest in such support rights by depositing a notice in the United States mail, postage prepaid, addressed to the last-known address of such person.

(2) However, nothing in this section shall be construed to require an applicant or recipient to provide identification information the validity of which is subject to honest doubts or the public disclosure of which might reasonably tend to subject the applicant to a deprivation of constitutional liberty or property rights."

ORS 418.Ø45 How amount of aid is determined.

"(1) The need for and amount of aid to be granted for any dependent child or relative pursuant to ORS 418.Ø35 to 418.172 shall be determined, in accordance with the rules and regulations of the Adult and Family Services Division, taking into account:

"(a) The income, resources and maintenance available to such child and relative from whatever source derived, any expenses reasonably attributable to the earning of any such income, the necessary expenditures of the child or relative and the conditions existing in each case."

ORS 418.130 Use and custody of records of aid to dependent children.

"No person shall, except for purposes directly connected with the administration of aid to dependent children and in accordance with the rules of the Adult and Family Services Division, or the Children's Services Division, whichever is applicable, solicit, disclose, receive, make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or names of, or any information concerning, persons applying for or receiving such aid, directly or indirectly derived from the records, papers, files or communications of the Adult and Family Services Division or the Children's Services Division, whichever is applicable, or acquired in the course of the performance of official duties."